

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs June 12, 2008

PAUL L. IVY v. TENNESSEE DEPARTMENT OF CORRECTION

**An Appeal from the Chancery Court for Wayne County
No. 11596 Stella Hargrove, Chancellor**

No. M2007-02606-COA-R3-CV - Filed December 9, 2008

This appeal involves the issue of mootness. The petitioner, while incarcerated in a state prison, was convicted by the prison disciplinary board of possession of security threat group material. He filed this petition for writ of certiorari challenging the legality of his administrative conviction. The trial court dismissed his claim, he appealed, and the dismissal was reversed and the cause remanded. Meanwhile, the prisoner was released from prison. Based on the petitioner's release from prison, the respondent department of correction filed a motion to dismiss his petition based on the doctrine of mootness. The trial court granted the motion to dismiss. The petitioner now files his second appeal, arguing that he sought relief related to matters other than his sentence and, therefore, the case was not rendered moot by his release from prison. Because the record does not include the prisoner's petition, we must vacate the trial court's decision and remand the cause for the trial court to determine whether the petitioner sought relief other than that related to his sentence.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court is
Vacated and Remanded**

HOLLY M. KIRBY, J., delivered the opinion of the Court, in which ALAN E. HIGHERS, P.J., W.S., and DAVID R. FARMER, J., joined.

Paul L. Ivy, appellant, *pro se*.

Robert E. Cooper, Jr., Attorney General and Reporter, Michael E. Moore, Solicitor General, and Bradley W. Flippin, Assistant Attorney General, for the appellee, Tennessee Department of Correction.

OPINION

While Petitioner/Appellant Paul L. Ivy ("Ivy") was an inmate at the South Central Correctional Facility ("SCCF"), he was found guilty by the SCCF Disciplinary Board ("Board") of

possession of security threat group (“STG”) material.¹ Ivy challenged the administrative conviction by filing a common-law petition for writ of certiorari in the trial court below. In his petition, he argued that the Board’s actions were illegal, arbitrary, and vindictive, that there was no evidence to support the charge, that the Board violated his due process rights, and that the statement of evidence on the hearing form was falsified. Ivy further stated that his crime constituted a Class A disciplinary offense, which warranted a sentence of five days of punitive segregation, a \$5 fine, an extended delay at a higher and more restricted security level, resulting in a later release date, a twelve-month package restriction, and a denial of sentence credits. *Ivy v. TDOC*, No. M2005-02339-COA-R3-CV, 2007 WL 1241258, at *2 (Tenn. Ct. App. Apr. 27, 2007).

In response, the Respondent/Appellee Tennessee Department of Correction (“TDOC”) filed a motion to dismiss for failure to state a claim upon which relief could be granted. The trial court granted TDOC’s motion to dismiss, and Ivy filed his first appeal in this action. *Id.* at *1.

On April 27, 2007, this Court reversed the trial court’s dismissal, finding that Ivy’s petition stated a valid claim for relief. We vacated the judgment of the trial court and remanded the cause for entry of an order granting Ivy’s writ of certiorari and directing TDOC to file the administrative record with the trial court. The trial court was further directed to address the substance of Ivy’s claims in light of the administrative record. *Ivy*, 2007 WL 1241258, at *3.

On June 20, 2007, in accordance with this Court’s order, the trial court granted Ivy’s petition for writ of certiorari and ordered TDOC to file a certified copy of the administrative record in this matter. On July 24, 2007, TDOC filed a certified copy of the record.

Meanwhile, Ivy completed his term of imprisonment and was released from prison on August 8, 2006. Consequently, on the same date that TDOC filed the administrative record, it also filed a motion to dismiss Ivy’s petition as moot. In support of this motion, TDOC attached an affidavit of a Sentence Manager for TDOC, Jeannetta Kimbro, verifying that Ivy was, indeed, released from prison on August 8, 2006.

On July 30, 2007, Ivy filed a response to TDOC’s motion to dismiss, arguing that the case should not be dismissed as moot because he sought relief beyond simply crediting his sentence. Ivy argued that the conviction on the disciplinary charge caused his name to be added to a Federal Bureau of Investigation (“FBI”) database that identified him as a “Gang Member.” In order to have his name removed from the FBI database, he needed a favorable adjudication of his petition. He also claimed that he intended to pursue a civil rights action under 42 U.S.C. § 1983, but needed a favorable resolution of his claims in order to do so. Because he sought these other forms of relief, Ivy claimed, his petition was not rendered moot simply because he had been released from prison.

¹ Ivy possessed a book that “appeared to be STG material.” *Ivy v. Tenn. Dept. of Correction*, No. M2005-02339-COA-R3-CV, 2007 WL 1241258, at *1 (Tenn. Ct. App. Apr. 27, 2007).

On October 10, 2007, the trial court entered an order granting TDOC's motion to dismiss based on mootness. The trial court's order stated, erroneously, that Ivy did not file a response to TDOC's motion to dismiss. The trial court found that, in light of TDOC's unchallenged motion, "any issues raised by Mr. Ivy regarding a prison disciplinary conviction are now moot." Ivy filed a motion to alter or amend the judgment, pointing out that he had actually filed a response to TDOC's motion to dismiss. On November 8, 2007, the trial court entered an order recognizing its error and acknowledging Ivy's response. Nevertheless, it held that its previous decision should stand. From this order, Ivy now appeals.

On appeal, Ivy argues that his petition for a writ of certiorari should not be dismissed based on mootness, because he sought relief other than a sentence credit. Whether a case or an issue is moot is a question of law, which we review *de novo*, with no presumption of correctness in the trial court's decision. **Jackson v. TDOC**, No. M2000-02065-COA-R3-CV, 2002 WL 598563, at *2 (Tenn. Ct. App. Apr. 17, 2002); **Easley v. Britt**, No. M1998-00971-COA-R3-CV, 2001 WL 1231516, at *2 (Tenn. Ct. App. Oct. 16, 2001).

This Court has previously explained the doctrine of mootness in the context of an appeal involving a prisoner:

The doctrine of justiciability prompts courts to stay their hand in cases that do not involve a genuine and existing controversy requiring the present adjudication of present rights. **State ex rel. Lewis v. State**, 208 Tenn. 534, 537, 347 S.W.2d 47, 48 (1961); **Dockery v. Dockery**, 559 S.W.2d 952, 954 (Tenn. Ct. App. 1977). Thus, our courts will not render advisory opinions, **Super Flea Mkt. v. Olsen**, 677 S.W.2d 449, 451 (Tenn. 1984); **Parks v. Alexander**, 608 S.W.2d 881, 892 (Tenn. Ct. App. 1980), or decide abstract legal questions. **State ex rel. Lewis v. State**, 208 Tenn. at 538, 347 S.W.2d at 49.

Cases must be justiciable not only when they are first filed but must also remain justiciable throughout the entire course of the litigation, including the appeal. **Lewis v. Continental Bank Corp.**, 494 U.S. 472, 477, 110 S.Ct. 1249, 1253, 108 L.Ed.2d 400 (1990); **Kremens v. Bartley**, 431 U.S. 119, 128-29, 97 S.Ct. 1709, 1715 (1977); 13A Charles A. Wright et al., *Federal Practice and Procedure* §§ 3533, 3533.10 (2d ed. 1984) ("Federal Practice and Procedure"). The concept of mootness deals with the circumstances that render a case no longer justiciable. **Davis v. McClaran**, App. No. 01-A-01-9304-CH-00164, slip op. at 2, 19 T.A.M. 1-3, 1993 WL 523667 (Tenn. Ct. App. Dec. 10, 1993), *perm. app. granted* (Tenn. Mar. 28, 1994) ("[m]ootness is a doctrine of justiciability"); *Federal Practice and Procedure* § 3533, at 211.

A moot case is one that has lost its character as a present, live controversy. **McCanless v. Klein**, 182 Tenn. 631, 637, 188 S.W.2d 745, 747 (1945); **Krug v. Krug**, 838 S.W.2d 197, 204 (Tenn. Ct. App. 1992); **LaRouche v. Crowell**, 709 S.W.2d 585, 587 (Tenn. Ct. App. 1985). The central question in a mootness inquiry

is whether changes in the circumstances existing at the beginning of the litigation have forestalled the need for meaningful relief. Federal Practice and Procedure § 3533.3, at 261. *A case will generally be considered moot if it no longer serves as a means to provide relief to the prevailing party.* ***Church of Scientology v. United States***, 506 U.S. 9, ----, 113 S.Ct. 447, 449, 121 L.Ed.2d 313 (1992); ***Knott v. Stewart County***, 185 Tenn. 623, 626, 207 S.W.2d 337, 338-39 (1948); ***Massengill v. Massengill***, 36 Tenn. App. 385, 388-89, 255 S.W.2d 1018, 1019 (1952).

Thus, a suit brought to enjoin a particular act becomes moot once the act sought to be enjoined takes place. ***Badgett v. Broome***, 219 Tenn. 264, 268, 409 S.W.2d 354, 356 (1966); ***Malone v. Peay***, 157 Tenn. 429, 433, 7 S.W.2d 40, 41 (1928). Similarly, an appeal concerning the legality of a prisoner's incarceration becomes moot upon the prisoner's unconditional release. ***State ex rel. Lewis v. State***, 208 Tenn. at 538, 347 S.W.2d at 49; ***State v. Doe***, 813 S.W.2d 150, 152 (Tenn. Crim. App. 1991).

McIntyre v. Traugher, 884 S.W.2d 134, 137 (Tenn. Ct. App. 1994) (emphasis added). Thus, an appeal filed by a prisoner that challenges only the terms of his sentence may become moot by virtue of his release from prison. *Id.*

In ***Easley v. Britt***, *supra*, a state inmate was found guilty of the disciplinary offense of escape. As punishment for the offense, the inmate was removed from the work release program and his security status was reclassified from minimum security to medium security. The inmate filed a petition for writ of certiorari challenging the administrative decision. The trial court reviewed the administrative record and found that it contained material evidence to support the disciplinary board's decision. Therefore, the inmate's petition was dismissed. ***Easley***, 2001 WL 1231516, at *1. The inmate appealed, and both parties filed appellate briefs. After the briefs were filed, the appeals court learned that the inmate had been released from prison, and it took judicial notice of the fact of his release in accordance with Rule 14 of the Tennessee Rules of Appellate Procedure.

The appellate court noted that the ultimate relief sought by the inmate was "to clear his disciplinary record so that he could return to his minimum security classification and could be placed back in the work release program at the [prison] for the remainder of his sentence." *Id.* at *2. Because the relief sought related only to the terms of his imprisonment, his release from prison called into question the justiciability of the case. In this context, the appellate court reviewed the doctrine of mootness:

The courts, being careful stewards of their power, have developed various justiciability principles to serve as guidelines for determining whether providing judicial relief in a particular case is warranted. To be justiciable, a case must involve presently existing rights, live issues that are within a court's power to resolve, and parties who have a legally cognizable interest in the resolution of these issues. A case is not justiciable if it does not involve a genuine, existing controversy requiring the adjudication of presently existing rights. ***State v. Brown & Williamson Tobacco Co.***,

18 S.W.3d 186, 193 (Tenn. 2000); *State ex rel. Lewis v. State*, 208 Tenn. 534, 537, 347 S.W.2d 47, 48 (1961); *Ford Consumer Fin. Co. v. Clay*, 984 S.W.2d 615, 616 (Tenn. Ct. App. 1998).

The requirements for litigation to continue are essentially the same as the requirements for litigation to begin. *Charter Lakeside Behavioral Health Sys. v. Tennessee Health Facilities Comm’n*, M1998-00985-COA-R3-CV, 2001 WL 72342, at *5 (Tenn. Ct. App. Jan. 30, 2001) (No Tenn. R. App. P. 11 application filed). Thus, cases must remain justiciable throughout the entire course of the litigation, including the appeal. *State v. Ely*, 48 S.W.3d 710, 716 n. 3 (Tenn. 2001); *Cashion v. Robertson*, 955 S.W.2d 60, 62-63 (Tenn. Ct. App. 1997). A moot case is one that has lost its justiciability because it no longer presents a present, live controversy. *McCanless v. Klein*, 182 Tenn. 631, 637, 188 S.W.2d 745, 747 (1945); *County of Shelby v. McWhorter*, 936 S.W.2d 923, 931 (Tenn. Ct. App. 1996); *McIntyre v. Traugher*, 884 S.W.2d 134, 137 (Tenn. Ct. App. 1994). *Thus, a case will be considered moot if it no longer serves as a means to provide some sort of judicial relief to the prevailing party.* *Knott v. Stewart County*, 185 Tenn. 623, 626, 207 S.W.2d 337, 338-39 (1948); *Ford Consumer Fin. Co. v. Clay*, 984 S.W.2d at 616; *Massengill v. Massengill*, 36 Tenn. App. 385, 388-89, 255 S.W.2d 1018, 1019 (1952).

Id. (emphasis added). The appellate noted that the relief Ensley sought – reclassification of his security status – would have no practical effect on him after his release, even if he were to prevail in his case. In light of this, the case was dismissed as moot. *Id.* at *3.

In the instant case, the trial court dismissed Ivy’s petition for the same reason, finding that “any issues raised by Mr. Ivy regarding a prison disciplinary conviction are now moot.” Ivy now argues that, in addition to the punishment he received related to his sentence, his administrative conviction resulted in him being mischaracterized as a “Gang Member” on an FBI database. He says that this listing impacts his ability to seek jobs, housing, and adversely affects him in other ways. Ivy asserts that, as part of the relief requested in his petition for certiorari, he requested that his name be removed from the FBI list of “gang members” in its database.

Our review of the trial court’s decision is complicated by the fact that the record on appeal does not include a copy of Ivy’s petition for a writ of certiorari, which was cited in the first decision in this case. Thus, while we are charged with doing a *de novo* review of the trial court’s finding that Ivy’s petition is moot, we are unable to look at his petition to determine whether his case “no longer serves as a means to provide some sort of judicial relief to the prevailing party.” *Id.* at *2. If, in fact, Ivy requested relief other than that related to his personal freedom, his case would not be rendered moot by his release. Therefore, we must remand the case to the trial court to review the complete record and determine whether Ivy sought relief other than that related to his sentence, and, if so, to address the merits of his petition. This holding pretermits all other issues raised on appeal.

The decision of the trial court is vacated and the cause is remanded for further proceedings consistent with this Opinion. Costs on appeal are to be taxed to the Appellee Tennessee Department of Correction, for which execution may issue, if necessary.

HOLLY M. KIRBY, JUDGE